

Tackling the Hazardous Aftermath of Asia's Asbestos Consumption

Moderator: Madhumita Dutta

Introducing the panel of speakers, Madhumita Dutta said that, having defined the problems caused by the use of asbestos worldwide, it was essential that solutions be found for protecting humanity and the environment from contamination. In the presentation *The ILO Campaign to End Asbestos-Related Diseases*, Tsuyoshi Kawakami [15] delineated the asbestos policy of the International Labor Organization (ILO), citing ILO Asbestos Convention 1986 and Asbestos Resolution 2006. The speaker listed five key action areas which made up the ILO's campaign to eliminate asbestos-related disease:

- the promotion of asbestos awareness amongst national populations and governments; research had revealed that government officials often had a low level of knowledge about the asbestos hazard;
- diagnostic training and support for physicians on the front line; the lack of medical expertise in diagnosing asbestos-related diseases fed into government policy when few cases of asbestos-related disease were identified;
- the provision of information, the development of financial programs and the promotion of sustainable technologies to encourage the replacement of asbestos manufacturing by a safer production system;
- technical assistance for small companies to help them make the transition to a safer technology;
- the establishment and implementation of national asbestos programs.



Tsuyoshi Kawakami (center) with Hisashi Ogawa and Madhumita Dutta

Recent ILO activities on asbestos had included: the organization's participation in national asbestos workshops in Vietnam (2008), Thailand (2007 & 2008), medical training courses and dialogue with member states to encourage them to adopt Asbestos Convention 1986 (No. 162) and Oc-

cupational Cancer Convention 1974 (No. 139).

Currently, 125 million people were being exposed to asbestos worldwide, 60% of them in the Asia-Pacific region. More than 90,000 workers died every year from asbestos-related diseases. Asbestos, the world's worst occupational carcinogen, accounted for 54% of all deaths from occupational cancer. In light of these facts and increasing asbestos consumption in Asia, the World Health Organization (WHO) was, said Hisashi Ogawa, seriously concerned [16]. The speaker detailed the collaborative program on asbestos being implemented by the WHO in conjunction with the ILO following agreement reached at the 13th Session of the ILO/WHO Joint Committee on Occupational Health (2003) that special efforts would be taken to eliminate asbestos-related diseases. In his presentation, *Towards the Elimination of Asbestos-related Diseases: WHO Approach*, Ogawa reiterated the WHO's asbestos policy:

- all types of asbestos caused asbestosis, mesothelioma and lung cancer;
- no safe threshold level of exposure had been identified;
- safer substitutes existed;
- exposure of workers and other users of asbestos-containing products was extremely difficult to control;
- asbestos abatement was very costly and hard to be carried out in a completely safe way.

As well as working with ILO colleagues, the WHO had supported initiatives by other stakeholders such as the Asian Asbestos Initiative organized by the University of Occupational and Environmental Health, Japan, a WHO collaborating center, the Asian Asbestos Conference 2006 (Bangkok) and, of course, AAC 2009. A new publication which described recommended procedures for dealing with asbestos in post-disaster emergencies illustrated the sustained and multifaceted approach of the WHO asbestos campaign [17].

As in other parts of the world, in Asia the fight against asbestos is being spearheaded by those most affected: the victims. In his presentation, Sugio Furuya, from the Ban Asbestos Network Japan (BANJAN) and the Japan Occupational Safety and Health Resource Center, addressed the subject of: *Asbestos Victims' Campaigns in Asia*. Although Japanese asbestos consumption decreased following the adoption of a national ban, usage was increasing in China, Thailand, India and other Asian countries. Asian manufacturers exploited national loopholes to transfer asbestos textile operations from Japan to Korea in the 1970s



Sugio Furuya

and afterwards from Korea to Indonesia.

During the next 40 years, mortality from malignant pleural mesothelioma amongst Japanese males could exceed 103,000. These asbestos-related deaths would occur as a result of six different types of exposure.

| Type of Exposure | At-Risk Groups |
|-----------------------|---|
| direct occupational | contracted workers and the self-employed |
| indirect occupational | contracted workers and the self-employed |
| domestic | relatives of exposed workers |
| neighborhood | residents living near asbestos plants, mines, etc. |
| environmental | members of the public occupying or using contaminated buildings |
| untraceable | everyone |

Epidemiologists had not yet begun to calculate the effects of Japanese asbestos consumption when the mobilization of Japanese asbestos victims began; in 1987, BANJAN was formed by a coalition of trade unions, citizens' groups, OSH campaigners and interested individuals. Amongst BANJAN's main objectives were: identifying and empowering asbestos victims and their families and lobbying for changes in government policies.

In 2002, BANJAN began efforts to bring together regional victims groups and in 2004 a nationwide umbrella group – the Japan Association of Asbestos-Related Diseases Victims and their Families – was formed. This national victims' group played a key role in organizing the Global Asbestos Congress 2004 (GAC 2004) which attracted 800 participants, including 120 overseas delegates from 40 countries, to the three-day event in Tokyo.

Within 6 months of GAC 2004, the Japanese public and media were shocked by public disclosures of scores of occupational and neighborhood asbestos deaths; the public impact of this news became known as the “Kubota Shock.” Despite the publicity which surrounded these revelations, it was left to the victims and to BANJAN to continue the campaign to obtain justice for all those affected, including the payment of financial compensation and all medical expenses, and the adoption of preventative measures.

The Japanese experience showed the importance of adopting a precautionary approach to asbestos, rather than waiting for a national epidemic to emerge. Among the lessons learned in Japan were that:

- an asbestos ban was the first step in tackling the wide-ranging aspects of national asbestos legacies.
- the role of asbestos victims and their families was paramount; indeed, asbestos mobilization began with the efforts of concerned individuals – such as the victims.
- coordinating the lobbying and campaigning efforts of civil society was crucial to maximizing effectiveness.
- regional and global cooperation at various levels and across subject disciplines was strongly recommended.
- good relations with journalists helped to keep the asbestos issue on the political agenda; the media was key to getting the message across.

Asian asbestos mobilization continued with efforts made in Korea by victims in Busan, a town which was home to many asbestos textile factories. In 2006, a Busan association of asbestos victims was set up which organized high-profile protests, an international asbestos symposium, a public hearing in the National Diet Library and an ongoing dialogue between Korean and Japanese victims' groups. In 2008, the Korean Network to Ban Asbestos (BANKO) was formed and this year (2009) the Korean National Network of Asbestos Victims was launched.

Since 2006, new asbestos victims' groups had been set up in India, the Philippines, Hong Kong and Taiwan. On a regional level, the Asia Network for the Rights of Occupational Accident Victims and the Asia Monitor Resource Center had increased their campaigning on asbestos. More could be achieved by activists working together on common issues such as: lobbying for a regional ban, registering at-risk individuals, monitoring occupational and public health, pressing for improved medical treatment and financial support, managing asbestos in the environment and preventing the transfer of hazardous technologies to developing countries.

Although international trade unions and properly constituted national unions were, said speaker Fiona Murie of the Building and Woodworkers International (BWI) [18]. “overwhelmingly in favor of a worldwide asbestos ban,”

since 2006 an industry-backed front group – the International Trade Unions’ Alliance for ‘Chrysotile’ – had been aggressively promoting pro-asbestos propaganda, pressurizing international agencies and national governments to delay action on asbestos and attacking ban asbestos campaigners. The Russian-based pro-chrysotile “movement”

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was made up of personnel from asbestos mining and cement manufacturing industries; corporate munificence enabled industry stooges to run the “No Chrysotile Ban” website, produce glossy multilingual literature and send delegates around the world on lobbying junkets.

In her presentation, *Global Mobilization of Trade Union Action on Asbestos*, Ms. Murie contrasted the scams perpetrated by these imitation trade unionists with the BWI campaign to protect human beings from the asbestos hazard. The main BWI arguments for banning all types of asbestos, including chrysotile (white) asbestos, were the following:

- all types of asbestos had been classified by the International Agency for Research into Cancer (IARC) as Group 1 carcinogens;
- safer substitutes were available and had been positively evaluated by the WHO and IARC;
- there was no safe threshold of exposure, industry’s “controlled use” policy was a myth especially in the construction industry in developing countries;
- the ILO policy was clarified by a 2006 Resolution adopted by the 95th Session of the International Labour Conference which called for an end to the use of chrysotile [19]; the BWI, working in collaboration with other union activists, was instrumental in getting this resolution adopted.

The BWI continued to work with its affiliates and stakeholders from other sectors of civil society, such as NGOs, asbestos victims groups, government agencies and international bodies. Concluding her talk, the speaker urged conference delegates to coordinate efforts to push for government action, help identify key players and decision makers in national asbestos debates, develop country and sector specific campaign strategies and make use of regional networks to progress BWI goals.

In recognition of the fact that Australia had the highest incidence of asbestos cancer in the world, the Government agreed to develop a national research strategy under the auspices of a new body: the National Centre for Asbestos-Related Diseases (NCARD) [20]. Professor Bruce Robinson, NCARD’s Director, began his presentation by describing the operations of this virtual organization, hosted in Perth by the University of Western Australia. NCARD pro-



Professor Bruce Robinson

moted a coordinated and collaborative asbestos cancer research program aimed at the development of new treatment protocols and the discovery of cures; it also lobbied the government and other stakeholders for additional funding. NCARD’s results had been impressive with substantial progress in the development of early diagnosis methods, new treatment protocols involving immunotherapy, chemotherapy, gene therapy and new surgical approaches.

The professor used the opportunity of his presentation in Hong Kong to extend NCARD’s remit beyond Australia’s shores when he launched: *A New Australia–Asia Asbestos Research Cooperative*. Such a scheme was urgently needed due to the high levels of asbestos consumption in Asia, the lack of controls and the popularity of cigarette

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smoking. In the coming decades, Professor Robinson said, between one and two million people could die from asbestos-induced cancer in Asia. It was important to conduct research on Asian asbestos issues for medical reasons, on grounds of compassion and morality, and because it could save a lot of money. Predictions for national asbestos compensation bills were horrific: US\$200 bn in the United States, US\$85 bn in Europe, US\$8.5 bn in Australia. There were no predictions for Asia.

The aims of the new cooperative were to:

- keep researchers updated on current research and treatment developments;
- provide training fellowships in asbestos-related disease research;
- collaborate in science and medicine, i.e. epidemiology and clinical trials;
- support the environmental control of asbestos exposures.

In Asia, a region which was plagued by shortages of medical equipment and training opportunities, participation in the Australian program was an exciting prospect with much to offer: periodic updates on asbestos research and treatment, lectures by asbestos experts, Australian training fellowships for junior doctors or scientists to learn about research into occupational lung diseases (particularly asbestos diseases) and research collaboration to get hard data. Without country specific data, it was extremely difficult to convince policymakers of the need to ban asbestos; with this data and with the support of experts, changing national policy might become a real possibility. Concluding his presentation, the speaker encouraged AAC 2009 delegates to take part in the new initiative and asked them to spread news about the cooperative to their colleagues. In an upcoming trip to Indonesia, the professor hoped to encourage participation from local doctors.

For decades, the producers and processors of asbestos have conducted business on a global scale. Japanese asbestos companies owned plants in Korea and Indonesia and American manufacturers sold asbestos-containing products throughout Asia. Lawyer Steven Kazan's presentation *Transnational Claims: How U.S. Developments Affect Asian Asbestos Victims* explored one consequence of the globalized market: the possibility for Asian asbestos victims to bring successful claims against U.S. defendants [21]. Having dismissed as too uncertain options such as suing the U.S. Government under the Federal Tort Claims Act, 28 U.S.C.A. Section 1346 or U.S. corporations under the Alien Tort Claims Act, 28 U.S.C.A. Section 1350, the speaker focused his remarks on the possibility of obtaining compensation from one of the 25 bankruptcy trusts set up as a result of Chapter 11 reorganizations. Although, the current assets of these trusts was \$25,998,000,000, when the assets of the pending bankruptcies of Asarco, PCC, Quigley, THAN and WR Grace were added to the pot, the

total would exceed \$33 billion [22]. Of the 25 operating trusts, nine acknowledged liabilities from foreign sites with Babcock & Wilcox's 2,285 sites constituting 77% of all the foreign sites listed. Eleven of the trusts acknowledged shipboard exposures with Babcock & Wilcox's 8,022 ships accounting for 61% of the total (13,056) [23]. While the maximum value of a mesothelioma claim between trusts varied from a low of \$40,000 (HK Porter) to a high of \$1 million (Narco), the majority of trusts had similar structures and processes for lodging claims. [It should be pointed out that the trusts generally pay only a proportion of the value of a mesothelioma claim; e.g. under the HK Porter Trust fund only 6.3% of the listed value of a claim would be paid, whereas under the Owens Corning Trust 40% would be paid.]

By and large, the process of submitting a claim was "relatively easy and victim friendly," although all submissions must be supported by certified abstracts or translations into English. The speaker made it clear that the successful submission of a claim could be accomplished by a non-lawyer and recommended that asbestos victims' groups or trade unions undertake this task on behalf of their members. To obtain compensation from a trust, claimants must:

- show exposure to a company's product at one of their worksites;
- state their occupation and the time period during which they worked with the product;
- specify their asbestos-related disease and name their dependents;
- calculate their economic loss (optional).

The speaker invited delegates to attend an afternoon breakout session which would provide a detailed explanation of how to submit claims to the U.S. trusts.

Bankruptcy Trusts: Approved Work Sites

25 Operating Trusts

No Approved Site Lists

| | |
|--------|----------|
| Amatex | Celotex |
| Artra | Manville |
| UNR | |

Approved Site Lists - US and Canada only - 11

Approved Site Lists with foreign sites - 9

| | |
|------------------|--------------------|
| ABB Lummus | 28 sites |
| AP Green | 277 sites |
| Babcock & Wilcox | 2,285 sites |
| Halliburton | 77 sites |
| Harbison Walker | 3 sites |
| Eagle-Picher | 56 sites |
| Fibreboard | 1 site |
| Keene | 3 sites |
| Owens Corning | 250 sites |
| Total | 2,980 sites |

Bankruptcy Trusts: Approved Ships

25 Operating Trusts

No Approved Site Lists - 5

Approved Site Lists with No Approved Ships - 9

Site Lists with Approved Ships - 11

| | |
|----------------------------|---------------------|
| AP Green | 82 ships |
| Armstrong World Industries | 85 ships |
| Babcock & Wilcox | 8,022 ships |
| CE Thurston | 33 ships |
| Combustion Engineering | 2,300 ships |
| Fibreboard | 22 ships |
| Halliburton | 290 ships |
| Harbison-Walker | 11 ships |
| Keene | 103 ships |
| Owens Corning | 916 ships |
| Western | 1,192 ships |
| Total | 13,056 ships |